

Prepared by and return after recording to:

Parker Poe Adams & Bernstein (Mark Frederick)
301 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**FIRST AMENDMENT TO MERRITT HINTON OAKS CONDITIONAL
DISTRICT UTILITY ALLOCATION AGREEMENT**

This FIRST AMENDMENT TO MERRITT HINTON OAKS CONDITIONAL DISTRICT UTILITY ALLOCATION AGREEMENT (this **“First Amendment”**), made and entered into this ____ day of _____, 2023, by and between Merritt MW1, LLC (as assignee from Merritt Acquisitions, LLC), a North Carolina limited liability company (**“Owner”**) and the Town of Knightdale, North Carolina (the **“Town”**) (Owner and the Town hereinafter collectively referred to as the **“Parties”**).

WITNESSETH:

WHEREAS, the Parties have entered into that certain Utility Allocation Agreement dated February 17, 2021, and recorded in Book 18468, Pages 0312-0341 of the Wake County Register of Deeds (the **“UAA”**) for the purposes of setting forth certain rights and obligations relating to Owner’s development of real property (PINS 1744-56-6995, 1744-47-9093, 1744-47-6090, 1744-47-9612) consisting of 46.21 acres, more or less, within the planning jurisdiction of the Town (the **“Project”**) as more particularly described in the UAA; and

WHEREAS, the Parties desire to modify and amend the UAA according to the terms outlined below,

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized Terms. All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the UAA.

2. Revision to Section 6 Community Design Exceptions.

Section 6. Community Design Exceptions. Owner hereby agrees that the following zoning conditions were granted by the approved Master Plan:

1. The following uses shall be permitted (P) by right in accordance with UDO Sec 2.3.C:

- a. Animal Services
- b. ATM
- c. Banks, Credit Unions, Financial Services
- d. Business Support Services
- e. Government Services
- f. Medical Services
- g. Post Office
- h. Professional Services
- i. Studio — Art, dance, martial arts, music
- j. Auto Parts Sales
- k. Amusements, Indoor — 5,000 sf or less
- l. Amusements, Indoor — 5,001 sf - 20,000 sf
- m. Amusements, Indoor — Greater than 20,000 sf
- n. Cultural or Community Facility
- o. Recreation Facilities, Indoor
- p. Laboratory - medical, analytical, research & development
- q. Laundry, dry cleaning plant
- r. Manufacturing, Light
- s. Manufacturing, Neighborhood
- t. Media Production
- u. Metal Products Fabrication, machine or welding shop
- v. Research and Development
- w. Public Safety Facility
- x. Schools — Vocational/Technical
- y. Utilities-Class 1 & 2
- z. Utilities-Class 3

2. The following uses are permitted subject to additional standards (PS), found in Ch 3:

- a. Agribusiness
- b. Personal Services
- c. Tattoo Shops
- d. Storage - Warehouse, indoor storage
- e. Wholesaling and Distribution
- f. Transit, Road & Ground Passenger Services
- g. Wireless Telecommunication Facility-Stealth
- h. Wireless Telecommunication Facility-Tower

3. The following shall be required Conditional Districts within the MI zoning district (CD), in accordance with UDO Sections 2.3.C, 2.16, 3.3, and 15.6.C.4:

- a. Hospital
- b. Theater, Live Performance
- c. Theater, Movie

4. The following uses shall be permitted subject to additional standards proposed by the applicant and approved by Town Council. These uses shall be subject to additional standards present in the UDO not otherwise stated below, in accordance with UDO Sections 2.3.C, 3.3, or elsewhere:

- a. Equipment Rental
 - i. Outdoor storage is permitted only in accordance with Section 5 below. Otherwise, all equipment for sale or rent must be displayed within an enclosed building.
 - ii. All equipment shall be stored within an enclosed building, opaque fence or wall and restricted to the rear yard.
- b. Vehicle Service – Maintenance/Body Work/Repair Conditions
 - i. Outdoor storage is permitted only in accordance with Section 5 below. Otherwise, all vehicles, materials or equipment shall be stored within an enclosed building.
 - ii. Any operation which results in the creation of noxious vibrations, odors, dust, glare or sound is prohibited.
- c. Vehicle/Heavy Equipment Sales
 - i. Outdoor storage is permitted only in accordance with Section 5 below. Otherwise, all vehicles, materials or equipment shall be stored within an enclosed building.

5. Outdoor storage accommodation areas (supplies and vehicles) shall be permitted as accessory to a principal use if it complies with the following requirements:

- a. Limited to areas identified on Exhibit F
- b. Does not interfere with the circulation of vehicles on site
- c. Does not include salvage vehicles
- d. Screened by vinyl coated chain link fencing with slats
- e. Screening does not to exceed 8 feet in height
- f. If provided, lighting levels shall not exceed the lighting cut-off levels approved for the site
- g. The time stored outside does not exceed 30 days for any single vehicle

6. All other uses shall not be permitted.

3. Revisions to Exhibit C. Exhibit C to the UAA shall be replaced in its entirety by the Exhibit C attached to this First Amendment

4. Revisions to Exhibit D. Exhibit D to the UAA shall be replaced in its entirety by the Exhibit D attached to this First Amendment

5. Remaining Provisions of UAA Still in Force. All remaining provisions of the UAA not inconsistent with this First Amendment are hereby ratified and confirmed, and shall remain in full force and effect.

6. Miscellaneous. The foregoing is intended to be an addition and a modification to the UAA. Except as modified and amended by this First Amendment, the UAA shall remain in full force and effect. If anything contained in this First Amendment conflicts with any terms of the UAA, then the terms of this First Amendment shall govern and any conflicting terms of the UAA shall be deemed deleted in their entirety. Each party to this First Amendment shall execute all instruments and documents and take such further action as may be reasonably required to effectuate the purposes of this First Amendment. This First Amendment may be modified only by a writing executed by the parties hereto. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument. The invalidity of any portion of the First Amendment shall not have any effect on the balance hereof. This First Amendment shall be binding upon the parties hereto, as well as their successors, heirs, executors and assigns. This First Amendment shall be governed by, and construed in accordance with, North Carolina law.

SIGNATURES APPEAR ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, the parties hereby execute this First Amendment as of the dates set below.

ATTEST:

TOWN OF KNIGHTDALE,

By: _____

By: _____

Heather Smith, Town Clerk

Jessica Day, Mayor

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I certify that _____, Town Clerk of the Town of Knightdale, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed Jessica Day sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Date: [_____] [___], 2023

Official Signature of Notary Public

Notary printed or typed name

[OFFICIAL SEAL]

My commission expires:

This Agreement complies with the provisions of the North Carolina Fiscal Control Act.

Finance Director

MERRITT ACQUISITIONS, LLC, a North Carolina limited liability company

By: _____

Name: _____

Title: _____

STATE OF [_____]

COUNTY OF [_____]

I certify that _____ personally appeared before me this day acknowledged that (s)he is Manager of MERRITT ACQUISITIONS, LLC, a North Carolina limited liability company, and that (s)he, in such capacity and being authorized to do so, executed the foregoing on behalf of said limited liability company for the purposes stated therein.

Date: [_____] [____], 2023

Official Signature of Notary Public

Notary printed or typed name

My commission expires:

[OFFICIAL SEAL]

Exhibit C
Phasing Schedule

Buildings B1, B2 and B3 will be completed no later than December 31, 2022

Building A1, will be completed no later than December 31, 2025

Building A2 will be completed no later than December 31, 2025

****All building references refer to the Master Plan attached as Exhibit B**

Exhibit D

[See attached]

Exhibit E

[See attached]